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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, *et al.*,

Plaintiff,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, *et al.*,

Defendants.

Case No. 3:25-cv-1766-EMC

**DEFENDANTS' MOTION FOR A STAY
PENDING APPEAL**

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 8, Defendants respectfully renew their request that this Court stay its judgment setting aside Secretary Noem’s Vacatur of the 2025 Temporary Protected Status (TPS) Extension for Venezuela,¹ Partial Vacatur of the 2024 TPS extension for Haiti,² and Termination of the 2023 TPS designation for Venezuela,³ to allow Defendant to pursue an appeal.⁴ It appears that this Court has already rejected that request implicitly by entering final judgment, but Defendants respectfully ask that this Court explicitly rule on this motion no later than 5:00pm PDT on September 10, 2025. After that time, Defendants intend to seek a stay pending appeal from the Ninth Circuit. Fed. R. App. P. 8(a)(2). Defendants have notified Plaintiffs, who oppose the relief requested in this motion.

LEGAL STANDARD

To evaluate whether to issue a stay pending appeal, courts consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). The first two factors “are the most critical[,]” and the final factors merge where, as here, the government is a party. *Id.* at 434-35.

¹ *Vacatur of 2025 TPS Decision for Venez.*, 90 Fed. Reg. 8,805 (Feb. 3, 2025) (“2025 VZ Vacatur”).

² *Partial Vacatur of the 2024 TPS extension for Haiti*, 90 Fed. Reg. 10,511 (Feb. 24, 2025) (“HT Partial Vacatur”).

³ *Termination of the October 3, 2023 Designation of Venez. for TPS*, 90 Fed. Reg. 9,040 (Feb. 5, 2025) (“2025 VZ Termination”).

⁴ See ECF No. 271 (Defs.’ Aug. 7, 2025 Supp. Stay Br.) at 1 (requesting that “if the Court proceeds to final judgment and enters judgment against Defendants, the Court should stay any final judgment against Defendants and any further proceedings or discovery pending appeal or, at minimum, for at least 14 days to afford Defendants an opportunity to seek a stay in an orderly manner from the Ninth Circuit”); *id.* at 3 (requesting a stay of at least enough time to permit Defendant to “seek a stay in an orderly manner from the Ninth Circuit.”); ECF No. 280 (Sep. 5, 2025 Judgment).

ARGUMENT FOR A STAY

The Government Is Likely to Prevail on Appeal, as the Supreme Court Concluded in *Noem v. Nat'l TPS Alliance, et al.*, --- S.Ct. ---, 2025 WL 1427560 (May 19, 2025).

A stay pending appeal is warranted because the Supreme Court has already determined the proper status quo while this litigation unfolds: The termination for Venezuela should remain in effect. *Nat'l TPS Alliance*, 2025 WL 1427560 at *1. The Supreme Court's analysis of the relevant stay factors, including the balance of harms, "squarely control[]" in "like cases." *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). So there can be no doubt that that analysis "squarely control[s]" in the very *same case* in which the Supreme Court has already granted a stay pending disposition of any petition for a writ of certiorari.

It makes no difference that this Court's opinion also addresses the Secretary's partial vacatur of Haiti's TPS extension. ECF No. 279 at 53-57. The considerations with respect to Haiti do not "differ" from those with respect to Venezuela "in any pertinent respect," and the Court should maintain the same status quo. *Boyle*, 145 S. Ct. at 2654.

To the extent that the Court relies on the Ninth Circuit's recent opinion in *Nat'l TPS Alliance, et al. v. Noem*, --- F.4th ---, 2025 WL 2487771 (9th Cir. Aug. 29, 2025), Defendants note that the mandate has not issued for that decision and that the time for the Solicitor General to consider further review of that decision has not run. *See* Fed. R. App. P. 40, 41; 28 C.F.R. § 0.20(b) (providing that only the Solicitor General may authorize whether to seek further review). Likewise, this Court's summary judgment analysis largely incorporates the same rationale upon which it granted the postponement order stayed by the Supreme Court. ECF No. 279 at 30, 42, 45. Consequently, this Court should enter a stay pending appeal for all the reasons Defendants previously articulated in their prior briefing, including their motion to stay this Court's postponement order. *See* ECF No. 95 (Defs.' Apr. 1, 2025 Mot. for Stay) at 2-10.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court stay its judgment to permit Defendant to complete the process of seeking authorization from the Solicitor General to pursue an appeal. Defendants request this Court rule on this request by 5:00 p.m. PST September 10, 2025.

Dated: September 6, 2025

Respectfully submitted,
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[PROPOSED] ORDER GRANTING
MOTION FOR STAY OF JUDGMENT

Before the Court is Defendants' motion for a stay of the Court's judgment (ECF No. 281). Having reviewed the motion, IT IS HEREBY ORDERED that the motion for a stay is GRANTED.

Issued this ____ day of September, 2025.

Edward M. Chen
United States District Judge